

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

February 11, 2014 at 2:00 p.m.

1. [13-32602](#)-C-13 MARK/ELIZABETH ANDREW CONTINUED MOTION TO CONFIRM
WW-1 Mark A. Wolff PLAN
11-6-13 [[18](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 6, 2013. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

Prior Hearing

A hearing on the Motion to Confirm took place on January 14, 2014. At the hearing, the court decided to continue the hearing to Friday February 11, 2014 for the filing of a supplemental document resolving the Chapter 13 Trustee's Objection.

Chapter 13 Trustee Opposition

The Chapter 13 Trustee objected to confirmation of Debtors' Modified Plan because Section 6 of the plan (Dkt. 22) indicates that Class 2 debt to CIT Small Business Lending Corp will extend beyond the term of the plan, but shall be paid through the plan at a rate of \$1,030.00 per month, commencing

February 11, 2014 at 2:00 p.m.

at confirmation. Trustee is concerned that unless creditor agrees with treatment, the plan will not comply with applicable law. It appears Debtor is attempting to rewrite the terms of a long term debt, contrary to *In re Enewally*, 368 F.3d 1165, 1172 (9th Cir. 2004). *In re Enewally* stands for the proposition that a debtor may not use § 506(a) in combination with § 1322(b)(5) to reduce a secured claim and repay it over a period longer than the plan term. *Id.*

Discussion

After considering the Motion and the Trustee's Objection, the court agreed to continue the hearing because Debtor reported to the court that the subject Creditor agrees to the treatment and there will be written confirmation filed prior to the continued hearing date.

As it stands, there is no written confirmation from the subject creditor. Therefore, the court's tentative decision remains the same. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2013. By the court's calculation, 36 days' notice was provided. 42 days' notice is required.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to deny the Motion to Confirm the Plan without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Here, Debtor's Motion to Confirm does not comport with the local bankruptcy rule governing procedure to confirm modified plans. 11 U.S.C. § 1325(a)(1).

Pursuant to Local Bankr. Rule 3015-1(d)(1), if a debtor modifies a chapter 13 plan prior to confirmation, the debtor shall file and serve the modified chapter 13 plan together with the motion to confirm it. Notice of the motion should comply with FRBP 2002(b), which requires twenty-eight (28) days' notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1), requiring twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both rules parties-in-interest shall be served at least forty-two (42) days prior to the hearing.

Here, Debtor served the Motion to Confirm only thirty-six 36 days prior to the hearing on the matter and not forty-two (42) days, as required by LBR 3015-1(d)(1). Furthermore, Debtor did not serve the Chapter 13 plan with the Motion for Confirmation.

Debtor filed an original Chapter 13 plan on August 30, 2013. The Chapter 13 Trustee filed an Objection to Confirmation of the plan that was sustained per court order entered on November 23, 2013 (Dkt. 32). Although Debtor made no substantive changes to the original plan, because an objection to confirmation of the original plan was sustained the court treats any future efforts at confirming a plan as an effort to confirm a Modified Plan. Therefore, Debtor must follow LBR 3015-1(d)(1) when

attempting to confirm its Chapter 13 plan as it governs the procedure to confirm modified plans proposed prior to confirmation.

The court's decision is to deny the Motion to Confirm without prejudice. This will permit Debtor time to file and serve the Motion, together with the Chapter 13 plan, and set a date for hearing in accordance with the local rules.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm is denied without prejudice.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2014. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick, and a response was filed by creditor Kearsarge Mill Road Association.

Opposition by Chapter 13 Trustee

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

(1.) Debtors' modified plan proposes to reclassify Sierra Central Credit Union from a Class 2 secured claim to a Class 3 secured claim satisfied by the surrender of the 2005 Chevy Suburban collateral. Debtor's proposed modified plan does not authorize payments made to date by the Trustee. The Trustee has disbursed a total of \$7,637.42 to this creditor, which represents \$6,994.80 in principal and \$642.62 in interest. Modifying the plan to disallow prior payments of the claim appears to be beyond the scope of 11 U.S.C. § 1329(a)(1).

Debtor now proposes to reclassify Sierra Central Credit Union to Class 3, where a portion is presently unsecured pursuant to court order. Debtor has not vacated the order so the creditor is entitled to an unsecured claim under 11 U.S.C. § 506(a)(1). Sierra Central Credit union was valued at \$10,500.00 per September 7, 2012 Civil Minute Order and the balance of the claim to be paid as a general unsecured claim. Creditor filed an amended claim on March 16, 2013 reflecting a secured claim in the amount of \$12,478.70.

(2.) The Plan may not be the Debtors' best effort under 11 U.S.C. § 1325(b). Debtors' modified plan proposes a plan payment of \$9,250.00 total paid through January 6, 2014, then \$385.00 per month beginning January 25, 2014 for 39 months. Debtors' plan payment under the confirmed plan is \$500.00 per month for 60 months.

Debtors' current budget reflects that Debtors' average monthly income remains at \$6,385.84, while expenses have increased by \$5.00 due to the increase in Debtors' homeowners insurance, for a total of \$5,890.35. This leaves a total net income of \$495.49. Debtors are proposing a monthly plan payment of \$385.00.

While Debtor is proposing a 100% plan, a reduction in the plan payment to an amount below Debtors' available disposable income resulting in creditors being paid later rather than sooner is not in the creditors best interest, nor does it reflect best effort on behalf of the Debtor.

(3.) Debtors' Plan will complete in more than the 60 months proposed, possibly taking 84 months, which exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). The later date of Plan's completion appears to be due to the proposed increase in the percentage of unsecured creditors from 0% to 100%.

(4.) Debtor's current budget filed as an Exhibit was not filed using Official Form B 6I and BJ effective December 2013.

Response by Creditor

In response to Debtor's motion to modify plan, creditor Kearsarge Mill Road Association requests to be included on Debtor's Plan to receive monthly payments to be made by the Trustee. Creditor is listed in Debtor's petition under Schedule F as a creditor holding an unsecured nonpriority claim of \$4,328.00 for road association dues. Creditor will be paid in accordance with Class 7 claims and will receive no less than a 100% dividend if a plan is confirmed on those terms.

Pursuant to the issues outlined by the Chapter 13 Trustee, the modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed. The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 20, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on December 20, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 23, 2013. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3), (d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on December 23, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

6. [14-20239](#)-C-13 ALEJANDRO/JOANN REYES
RJ-1 Richard L. Jare
Thru #7

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA, INC.
1-28-14 [[18](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 28, 2014. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$6,500.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2008 Nissan Sentra. The Debtor seeks to value the property at a replacement value of \$6,500.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2010, more than 910 days prior to the filing of the petition, with a balance of approximately \$14,000.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$6,500.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of
Collateral filed by Debtor(s) having been

presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA, Inc. secured by a 2008 Nissan Sentra, is determined to be a secured claim in the amount of \$6,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$6,500.00 and is encumbered by a lien securing a claim which exceeds the value of the Property.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 28, 2014. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1173 Weber Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$315,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$424,000.00. Partners for Payment Relief, LLC's second deed of trust secures a loan with a balance of approximately \$47,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Partners for Payment Relief, LLC.'s secured by a second deed of trust recorded against the real property commonly known as 1173 Weber Way, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$315,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

8. [13-35963](#)-C-13 DEREK CASEBEER AND ERICA MOTION TO VALUE COLLATERAL OF
RJ-1 WHEELER-CASEBEER HOUSEHOLD FINANCE CORPORATION
Richard L. Jare OF CA & HSBC MORTGAGE SERVICES,
INC.
1-23-14 [[16](#)]

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 23, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is that the Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 9015 Neponset Drive, Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$320,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$459,445.00. HSBC Mortgage Services, Inc.'s (formerly Household Finance Corporation of California) second deed of trust secures a loan with a balance of approximately \$44,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of HSBC Mortgage Services, Inc. (formerly Household Finance Corporation of California) secured by a second deed of trust recorded against the real property commonly known as 9015 Neponset Drive, Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$320,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 3, 2014. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3), (d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed. The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on January 3, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee and the Office of the United States Trustee, in addition to all creditors, on November 7, 2013. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Confirm the Amended Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Here, the Chapter 13 Trustee has filed an opposition to Debtor's Second Amended Plan.

Prior Hearing

On January 14, 2014, the court held a hearing on Debtor's Motion to Confirm Plan. At the hearing, the court continued the matter to February 11, 2014 for the Trustee to file a reply or support for confirmation on or before February 4, 2014.

Chapter 13 Trustee's Opposition

Trustee asserted that the Plan exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d); the Plan will complete in 66 months in that Debtor does not consider Trustee fees when calculating the Plan. The Plan proposes to pay \$590.75 for 60 months for a total payment of \$35,445.00. Debtor proposes to pay \$28,356.00 at 10% interest for a total of \$36,980.11 to the Sacramento County Tax Collector.

Additionally, the Trustee is unable to determine feasibility of the Plan. Debtor proposes to pay County of Sacramento in Class 2 of the Plan \$28,356.00 at 10% interest, but does not propose a monthly dividend to the creditor.

Debtor's Response, filed 01/21/14 (Dkt. 56)

Debtor states that she will increase her plan payments from \$590.00 per month to \$602.48 per month. This will allow the Plan to complete within 60 months, and it will provide a dividend of \$480.00 per month to the Class 2 secured creditor, the Sacramento County Tax Collector.

Concurrently with this response, Debtor filed an Amended Schedule J. Debtor reduced her charitable contribution by \$11.63 per month and this allows her to increase the monthly Plan payment to \$602.48 per month, for a total of \$35,148.88 over the length of the plan.

Chapter 13 Trustee's Response, filed 02/04/14 (Dkt. 61)

Trustee filed a response following the initial hearing on the Motion held January 14, 2014. Trustee states that Debtor's proposed amendments resolve the Trustee's objection and Trustee does not oppose the Debtor's order confirming increasing the plan payment and providing for the monthly dividend to the Sacramento County Tax Collector.

Discussion

As Trustee no longer objects to confirmation of Debtor's Plan the court finds that the amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court is amendable to Debtor increasing the plan payment in the order confirming and providing for the monthly dividend to the Sacramento County Tax Collector in the order confirming.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on November 7, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

11. [13-35580](#)-C-13 ROMY OSTER
NLE-1 Gary S. Saunders
Thru #12

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
1-13-14 [[13](#)]

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 13, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

(1.) Debtor did not appear at the First Meeting of Creditors on January 9, 2014. The Trustee does not have sufficient information to determine if the Plan is suitable for confirmation under 11 U.S.C. § 1325. The hearing has been continued to March 13, 2014 at 10:30 a.m.

(2.) Debtor did not provide the Trustee with a tax transcript or a copy of the Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3).

(3.) Debtor's Plan has defects. Attorney Fee: Section 2.06 of the Plan does not indicate if Debtor's Attorney is complying with Rule 2016-1(c) or filing a separate Motion for fees. Section 2.07 indicates \$0 administrative expense, though attorney fees of \$1,000.00 are to be paid through the Plan.

Additionally, Mortgage Payment: Section 2.08 of the Plan lists a Class 1 mortgage to Nationstar Mortgage LLC and lists arrears of \$86,384.05. The ongoing monthly mortgage payment is listed as \$0. The same creditor is listed in Class 2B. The Debtor may be

attempting to modify a debt secured solely by the Debtor's primary residence, which is not allowed under 11 U.S.C. § 1322(b).

Pursuant to the issues highlighted by the Trustee, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

12. [13-35580](#)-C-13 ROMY OSTER
RMD-1 Gary S. Saunders

OBJECTION TO CONFIRMATION OF
PLAN BY NATIONSTAR MORTGAGE,
LLC
1-16-14 [[17](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 16, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor, Nationstar Mortgage, LLC, opposes confirmation of the Plan on the following grounds:

(1.) Debtor's Plan is vague and internally contradictory. Creditor holds a Note secured by a first priority Deed of Trust in connection with the Debtor's primary residence. The claim is delinquent and non-modifiable under 11 U.S.C. § 1322(b)(5). The Plan identifies creditor's deed of trust in Class 1 and identifies arrears in the amount of \$86,348.05, but provides \$0.00 for the ongoing payment. Creditor cannot tell if the Debtor intends to pay ongoing monthly installments required by the Note.

In addition, the proposed plan also lists Creditor in Class 2, for claims being bifurcated, with a value of the collateral as \$56,281.95 at 0% interest, but lists monthly dividend which equates to the amount of arrears that were put in Class 1. Creditor's claim cannot be both a Class 1 claim and a Class 2 claim at the same time.

(2.) Debtor's Plan does not comply with 11 U.S.C. §§ 1322(b)(5). Treatment of creditor in Class 2 and Class 1 is not permissible since creditor's claim is secured by the Debtor's primary residence and is a first priority lien, and cannot qualify as unsecured based on valuation.

Debtor needs to clarify the treatment of Nationstar Mortgage, LLC, as it is currently unclear and inconsistent. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.